

In The United States District Court For The Western District Of Pennsylvania

United States Of America

v. Criminal No. 19-00008

David Curran

MOTION TO DISMISS INDICTMENT

AND NOW, comes the defendant, David Curran, by his attorney, Alonzo Burney, Esquire, and files the following Motion To Dismiss Indictment:

1. The defendant, David Curran, is charged in Count 1s of the herein indictment with the crime of conspiracy to distribute synthetic cannabinoids while in the custody of the BOP.
2. The Government must prove each of the following elements beyond a reasonable doubt:
 - a. That two or more persons agreed to distribute and possess with the intent to distribute a controlled substance;
 - b. That Defendant was a party to, or member of, that agreement;
 - c. That Defendant joined the agreement or conspiracy knowing of its objective to distribute and possess with the intent to distribute a controlled substance and intending to join together with at least one other alleged conspirator to achieve those objectives; that is, that Defendant and at least one other alleged conspirator shared a unity of purpose and the intent to achieve those objectives.
3. The Government has provided substantial discovery already in the case which has included thousands of documents.
4. The discovery produced thus far has included:
 - a. Audio telephone calls of David Curran;
 - b. Inmate financial transactions;
 - c. Inmate visits;
 - d. Inmate contacts;
 - e. Inmate mailings in and out;
 - f. Inmate emails and text messages
 - g. Wiretap records;
 - h. Lab reports
 - i. Affidavits of probable cause for wiretaps and probable cause.
5. In all of the produced discovery, the name of David Curran is only produced on Government Exhibit 29, a mailed document from persons unknown to FCI McDowell.
6. There is no evidence that David Curran requested said Exhibit 29.
7. Said Exhibit 29 was never received by David Curran, and never in the possession of David Curran.
8. There is no evidence that David Curran was working with someone in this alleged conspiracy whether he was or was not in possession of the synthetic cannabinoids inside the prison.

9. The government has only charged one conspiracy in the case. If persons are in possession of the alleged controlled substances inside the prison, there is no evidence against David Curran that he possessed any of those substances from any member of the charged conspiracy or that he possessed any substances for other than personal use.
10. The government cannot prove a prima facie case against David Curran never the less a case beyond a reasonable doubt.

WHEREFORE, the defense requests this Honorable Court to dismiss the herein indictment against defendant, David Curran.

Respectfully Submitted,

/s/ Alonzo Burney

Alonzo Burney, Esquire

Attorney for the Defendant, David Curran